



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2017-0523; FRL-9972-09-Region 9]

Arizona: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Arizona applied to the EPA for final authorization of changes corresponding to certain federal hazardous waste rules promulgated between May 26, 1998, and July 28, 2006 (also known as RCRA Cluster VIII (checklist 167D) and Clusters IX through XVII) to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On October 5, 2017, EPA proposed to authorize the State's changes. During the 30-day comment period no adverse comments were received.

DATES: The final authorization is effective *[insert date 30 days after date of publication in the Federal Register]*.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, U.S. Environmental Protection Agency, Region 9, Land Division, 75 Hawthorne Street (LND-1-1), San Francisco, CA 94105, phone number: 415-972-3364, email: amaro.laurie@epa.gov.

SUPPLEMENTARY INFORMATION:

A. *What decisions has EPA made in this rule?*

On July 14, 2017, Arizona applied to EPA for final authorization of changes to the State hazardous waste program. EPA concludes that Arizona's application to revise its authorized

program meets all statutory and regulatory requirements established by RCRA, as set forth in RCRA sec. 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Arizona final authorization to operate as part of its hazardous waste program the changes listed below in Section E of this document, as further described in the authorization application.

Arizona has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

B. What is the effect of today's authorization decision?

The effect of this decision is that the changes described in Arizona's authorization application will become part of the authorized State hazardous waste program, and therefore will be federally enforceable. Arizona will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA retains its authorities under RCRA secs. 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized state program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Arizona is being authorized by today's action are already effective, and are not changed by today's action.

C. What were the comments on EPA's proposal and what is EPA's response?

A single comment in support of the action and no adverse comments were received during the public comment period.

D. For what has Arizona previously been authorized?

Arizona initially received final authorization on November 20, 1985, to implement its base hazardous waste management program. Arizona received authorization for revisions to its program on August 6, 1991 (56 FR 37290 effective October 7, 1991), July 13, 1992 (57 FR 30905 effective September 11, 1992), November 23, 1992 (57 FR 54932 effective January 22, 1993), October 27, 1993 (58 FR 57745 effective December 27, 1993), July 18, 1995 (60 FR 36731 effective June 12, 1995), March 7, 1997 (62 FR 10464 effective May 6, 1997), October 28, 1998 (63 FR 57605-57608 effective December 28, 1998), and March 17, 2004 (69 FR 12544 effective March 17, 2004), originally published on October 27, 2000 (65 FR 64369).

E. What changes is EPA authorizing with today's action?

Arizona submitted a final complete program revision application to EPA dated July 14, 2017, seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between May 26, 1998, and July 28, 2006 (also known as RCRA Cluster VIII (Checklist 167D only), Cluster IX (Checklists 169 and 173 – 180) and Clusters X through XVII). EPA has determined that Arizona's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all the requirements necessary to qualify for final authorization. Accordingly, EPA grants Arizona final authorization for the following program changes:

Program Revision Changes for Federal Rules

Arizona adopts by reference the federal RCRA regulations in effect January 29, 2007, at

Arizona Administrative Code (AAC) Title 18, Chapter 8, Article 2 (AAC R18-8-260 through 280 effective September 30, 2016). The federal requirements for which the State is being authorized are listed in the table below, noting the Arizona Administrative Register (AAR) volume and page and the AAC implementing rule sections. EPA is excluding Checklist 204 Performance Track from authorization because the program has been discontinued. An asterisk (*) after a checklist number indicates a rule that is optional for state adoption.

State Analogues to the Federal Program

Description of Federal Requirement and Checklist number (* Indicates Optional)	Federal Register Volume, Page and Date	Analogous Arizona Register (Volume/Page) and Administrative Code
Mineral Processing Secondary Materials Exclusion Rule. (Checklist 167 D*).	63 FR 28556 May 26, 1998.	6 AAR 3093, AAC R18-8-261(A), R18-8-268 July 24, 2000.
Petroleum Refining Process Wastes Rule. (Checklist 169).	63 FR 42110 August 6, 1998.	6 AAR 3093, AAC R18-8-261, 266, 268 July 24, 2000.
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088). (Checklist 173).	63 FR 51254 September 24, 1998.	6 AAR 3093, AAC R18-8-268 July 24, 2000.
Post-Closure Permit Requirement and Closure Process Rule. (Checklist 174*).	63 FR 56710 October 22, 1998.	6 AAR 3093, AAC R18-8-264, 265, 270 July 24, 2000.
HWIR-Media Rule. (Checklist 175*).	63 FR 65874 November 30, 1998.	6 AAR 3093, AAC R18-8-260, 261, 264, 265, 268, 270(A), (T) and (U) July 24, 2000.
Universal Waste Rule -- Technical Amendments. (Checklist 176*).	63 FR 71225 December 24, 1998.	6 AAR 3093, AAC R18-8-266, 273 July 24, 2000.
Organic Air Emission Standards: Clarification and Technical Amendments Rule. (Checklist 177).	64 FR 3381 January 21, 1999.	6 AAR 3093, AAC R18-8-262, 264, 265 July 24, 2000.
Petroleum Refining Process Wastes -- Leachate Exemption Rule. (Checklist 178*).	64 FR 6806 February 11, 1999.	6 AAR 3093, AAC R18-8-261 July 24, 2000.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, and Treatment Standards for Metal Wastes, and Zinc Micronutrient Fertilizers, and Carbamate Treatment Standards, and K088 Treatment Standards Rule. (Checklist 179).	64 FR 25408 May 11, 1999.	6 AAR 3093, AAC R18-8-261, 262, 268, July 24, 2000.
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Rule. (Checklist 180).	64 FR 26315 May 14, 1999.	6 AAR 3093, AAC R18-8-260 July 24, 2000.
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps Rule. (Checklist 181).	64 FR 36466 July 6, 1999.	9 AAR 816, AAC R18-8-260, 261, 264, 265, 268, 270, and 273 April 15, 2003.

Hazardous Air Pollutant Standards for Hazardous Waste Combustors Rule. (Checklist 182).	64 FR 52828 September 30, 1999.	9 AAR 816, AAC R18-8-260, 261, 264, 265, 266, and 270 April 15, 2003.
Hazardous Air Pollutant Standards for Hazardous Waste Combustors, Technical Correction Rule. (Checklist 182.1).	64 FR 63209 November 19, 1999.	9 AAR 816, AAC R18-8-261 and 266 April 15, 2003.
Land Disposal Restrictions Phase IV -- Technical Corrections Rule. (Checklist 183).	64 FR 56469 October 20, 1999.	9 AAR 816, AAC R18-8-261, 262, and 268 April 15, 2003.
Accumulation Time for Waste Water Treatment Sludges Rule. (Checklist 184*).	65 FR 12378 March 8, 2000.	9 AAR 816, AAC R18-8-262 April 15, 2003.
Organobromine Production Wastes Vacatur (Checklist 185*).	65 FR 14472 March 17, 2000.	9 AAR 816, AAC R18-8-261 and 268 April 15, 2003.
Amendments to Streamline the NPDES Program Regulations; Round Two Rule. (Checklist 186).	65 FR 30886 May 15, 2000.	10 AAR 4364, AAC R18-8-270 and 271 December 4, 2004.
Petroleum Refining Process Wastes -- Clarification (Checklist 187).	65 FR 36365 June 8, 2000.	9 AAR 816, AAC R18-8-261 and 268 April 15, 2003.
Hazardous Air Pollutant Standards - Technical Corrections. (Checklist 188*).	65 FR 42292 July 10, 2000, 66 FR 24270 May 14, 2001, 66 FR 35087 July 3, 2001.	10 AAR, AAC 4364 R18-8-261, 264 and 270 December 4, 2004.
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes. (Checklist 189).	65 FR 67068 November 8, 2000.	10 AAR, AAC 4364 R18-8-261 and 268 December 4, 2004.
Land Disposal Restrictions Phase IV -- Deferral for PCBs in Soil. (Checklist 190).	65 FR 81373 December 26, 2000.	10 AAR 4364, AAC R18-8-268 December 4, 2004.
Mixed Waste Rule. (Checklist 191*).	66 FR 27218 May 16, 2001.	10 AAR 4364, AAC R18-8-266 December 4, 2004.
Mixture and Derived-From Rules Revisions. (Checklist 192 A*).	66 FR 27266 May 16, 2001.	10 AAR 4364, AAC R18-8-261 and 268 December 4, 2004.
Land Disposal Restrictions Correction. (Checklist 192 B).	66 FR 27266 May 16, 2001.	10 AAR 4364, AAC R18-8-268 December 4, 2004.
Change of Official EPA Mailing Address. (Checklist 193).	66 FR 34374 June 28, 2001.	10 AAR 4364, AAC R18-8-260, 261, 265 December 4, 2004.
Mixture and Derived-From Rules Revision II. (Checklist 194*).	66 FR 50332 October 3, 2001.	10 AAR 4364, AAC R18-8-261 December 4, 2004.
Inorganic Chemical Manufacturing Wastes Identification and Listing. (Checklist 195).	66 FR 58258 November 20, 2001. 67 FR 17119 April 9, 2002.	10 AAR 4364, AAC R18-8-261 and 268 December 4, 2004.
CAMU Amendments. (Checklist 196*).	67 FR 2962 January 22, 2002.	10 AAR 4364, AAC R18-8-260 and 264 December 4, 2004.
Hazardous Air Pollutant Standards for Combustors: Interim Standards. (Checklist 197*).	67 FR 6792 February 13, 2002.	10 AAR 4364, AAC R18-8-264, 265, 266 and 270 December 4, 2004.
Hazardous Air Pollutant Standards for Combustors: Corrections. (Checklist 198).	67 FR 6968 February 14, 2002.	10 AAR 4364, AAC R18-8-266 and 270 December 4, 2004.

Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste. (Checklist 199).	67 FR 11251 March 13, 2002.	10 AAR 4364, AAC R18-8-261, December 4, 2004.
Zinc Fertilizer Rule. (Checklist 200).	67 FR 48393 July 24, 2002.	11 AAR 5523, AAC R18-8-261, 266 and 268, February 4, 2006.
Treatment Variance for Radioactively Contaminated Batteries. (Checklist 201*).	67 FR 62618 October 7, 2002.	11 AAR 5523, AAC R18-8-268 February 4, 2006.
Hazardous Air Pollutant Standards for Hazardous Waste Combustors- Corrections 2. (Checklist 202*).	67 FR 77687 December 19, 2002.	11 AAR 5523, AAC R18-8-270 February 4, 2006.
Recycled Used Oil Management Standards; Clarification (§ 261.5(j) correction only) . (Checklist 203*).	68 FR44659 July 30, 2003.	11 AAR 5523, AAC R18-8-261(H) February 4, 2006.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks. (Checklist 205*).	69 FR 22601 April 26, 2004.	11 AAR 5523, AAC R18-8-264 and 265 February 4, 2006.
Nonwastewaters from Dyes and Pigments. (Checklist 206).	70 FR 9138 February 24, 2005. 70 FR 35032 June 13, 2005.	12 AAR 3061, AAC R18-8-261 and 268 October 1, 2006.
Uniform Hazardous Waste Manifest Rule. (Checklist 207).	70 FR 10776 March 4, 2005. 70 FR 35034 June 16, 2005.	12 AAR 3061, AAC R18-8-260, 261, 262, 263, 264 and 265 October 1, 2006.
Methods Innovation Rule and SW-846 Final Update IIIB (partial; no clarifications incorporated by reference from 40 CFR part 279). (Checklist 208*).	70 FR 34538 March 4, 2005. 70 FR 44150 June 16, 2005.	12 AAR 3061, AAC R18-8-260, 261, 264, 265, 266, 268 and 270 October 1, 2006.
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. (Checklist 209*).	70 FR 45508 August 5, 2005.	12 AAR 3061, AAC R18-8-260, 261, 264, 265, 266, 268, 270 and 273 October 1, 2006.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks exemptions"). (Checklist 211*).	70 FR 57769 October 4, 2005.	14 AAR 409, AAC R18-8-261 March 3, 2008.
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). (Checklist 212*).	70 FR 59402 October 12, 2005.	14 AAR 409, AAC R18-8-260, 264, 265, 266 and 270 March 3, 2008.
Burden Reduction Initiative. (Checklist 213*).	71 FR 16862 April 4, 2006.	14 AAR 409, AAC R18-8-260, 261, 264, 265, 266, 268, and 270 March 3, 2008.
Corrections to Errors in the Code of Federal Regulations (partial; no corrections incorporated from Parts 267 or 279). (Checklist 214).	71 FR 40254 July 14, 2006.	14 AAR 409, AAC R18-8-260, 261, 262, 264, 265, 266, 267, 268, 270, 271 and 273 March 3, 2008.
Cathode Ray Tubes Rule. (Checklist 215*).	71 FR 42928 July 28, 2006.	14 AAR 409, AAC R18-8-260 and 261 March 3, 2008.

F. Where are the revised state rules different from the federal rules?

Since 1984, Arizona hazardous waste rules have contained several procedural requirements that are more stringent than EPA's. These more stringent procedural requirements are authorized

by Arizona Revised Statutes (ARS) section 49-922, which in directing Arizona to adopt hazardous waste rules, prohibits only nonprocedural standards that are more stringent than EPA:

1. Hazardous Waste Manifests. Arizona requires hazardous waste generators; transporters; and treatment, storage, and disposal facilities (TSDFs) to provide a copy of all hazardous waste manifests to Arizona monthly. [See AAC R18-8-262(I) and (J); R18-8-263(C), R18-8-264(J) and R18-8-265(J).] Federal regulations governing distribution of copies of the manifest do not require manifests to be provided to the state.
2. Annual Reports. Hazardous waste large quantity generators (LQGs) and TSDFs must submit reports to Arizona annually rather than every two years as the federal regulations require. [See AAC R18-8-260(E)(3); R18-8-262(H), R18-8-264(I) and R18-8-265(I).] Small quantity generators (SQGs) must also submit annual rather than biennial reports under R18-8-262(H).
3. Recyclers are required to submit annual reports to Arizona rather than no reports at all [AAC R18-8-261(J)].

EPA cannot delegate the federal requirements in 40 CFR 261.39(a)(5) and 261.41 contained in the Cathode Ray Tubes Rule set forth in 71 FR 42928, July 28, 2006. While Arizona adopted these requirements by reference in 14 AAR 409, AAC R18-8-260 and 261, EPA will continue to implement these requirements.

EPA gave notice at 80 FR 18777 of the removal of the provisions at 40 CFR 261.4(a)(16) and 40 CFR 261.38 related to comparable fuels due to the D.C. Circuit's vacatur of the "Hazardous Waste Combustors Revised Standards" Final Rule (63 FR 33782, June 19, 1998) in Natural Res. Def. Council v. EPA, 755 F.3d 1010 (D.C. Cir. 2014). This rule was previously

adopted and approved as part of Arizona's authorized program, but in light of the vacatur, EPA no longer considers these provisions to be part of Arizona's federally authorized program. On May 14, 2009, EPA gave notice at 74 FR 22741 of the termination of the National Environmental Performance Track Program; therefore, EPA is excluding provisions in Arizona's program implementing Performance Track, Checklist 204 (11 AAR 5523, AAC R18-8-262, February 4, 2006).

Other than the differences discussed above, Arizona incorporates by reference the remaining federal rules listed in Section E; therefore, there are no significant differences between the remaining federal rules and the revised State rules being authorized today.

G. Who handles permits after the authorization takes effect?

Arizona will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the State is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Arizona for the new or revised HSWA standards until Arizona has received final authorization for such new or revised HSWA standards. EPA and Arizona have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

H. How does today's action affect Indian country (18 U.S.C. 1151) in Arizona?

Arizona is not authorized to carry out its hazardous waste program in Indian country

within the State, which includes the Cocopah Tribe of Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation; Havasupai Tribe of the Havasupai Reservation; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation; Navajo Nation; Quechan Tribe of the Fort Yuma Indian Reservation; Salt River Pima-Maricopa Indian Community of the Salt River Reservation; San Carlos Apache Tribe of the San Carlos Reservation; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation; Yavapai-Apache Nation of the Camp Verde Indian Reservation; and the Yavapai-Prescott Indian Tribe. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

I. What is codification and is EPA codifying Arizona's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Arizona's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart D for this authorization of Arizona's program changes until a later date.

J. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the

purpose of RCRA sec. 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Arizona's revised hazardous waste program under RCRA are exempted under Executive Order 12866. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA sec. 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and impose no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or

environmental effects, the rule is not subject to Executive Order 12898. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective 30 days after the final approval is published in the Federal Register.

List of Subjects in 40 CFR Part 271

Environmental protection, administrative practice and procedure, confidential business information, hazardous waste, hazardous waste transportation, Indian lands, intergovernmental relations, penalties, reporting and record keeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 5, 2017.

Alexis Strauss,

Acting Regional Administrator, Region 9.

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